

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3063
Administrative Law Judge Division
May 14, 2001

R E S O L U T I O N

RESOLUTION ALJ 176-3063. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 14, 2001, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3063 (05/14/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-04-034 PACIFICORP, for Exemption from the Acquisition of Control of a Public Utility Requirements of California Public Utilities Code Section 854	Ratesetting	Ratesetting	YES
A01-04-039 NOS COMMUNICATIONS, INC. (U-5251-C), for Expansion of its Existing Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Services in the State of California	Ratesetting	Ratesetting	NO
A01-05-002 CALIFORNIA WATER SERVICE COMPANY, a corporation, for an order authorizing it to increase rates charged for water service in each of its operating districts to recover increased operating expenditures at its general office	Ratesetting	Ratesetting	YES
A01-05-003 PACIFIC GAS AND ELECTRIC COMPANY, Annual Earnings Assessment Proceeding (AEAP) Application for Approval of Energy Efficiency Shareholder Incentives for 2000 Program Year Accomplishments, 2000 Accomplishments for Pre-1998 Programs, Second Claim for Incentives for the 1999 Accomplishments for Pre-1998 Programs, and Third Claim for Incentives for the 1996 Program Year Accomplishments	Ratesetting	Ratesetting	YES
A01-05-004 ADELPHIA BUSINESS SOLUTIONS OPERATIONS, for Authority to Transfer Assets to ACC Operations, Inc. and ACC Telecommunications, L.L.C.	Ratesetting	Ratesetting	NO
A01-05-005 NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT, for an Order authorizing construction of two (2) Standard No.8 Flashers pursuant to CPUC General Order No. 75-C, with low-tone bells, baffles and back to back roundels, at the existing concrete in-station pedestrian at-grade crossing at the Carlsbad Village Commuter Rail Station	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3063 (05/14/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-05-006 NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT, for an Order authorizing construction of two (2) Standard No.8 Flashers pursuant to CPUC General Order No. 75-C, with low-tone bells, baffles and back to back roundels, at each existing concrete in-station pedestrian at-grade crossing at the Carlsbad Poinsettia Rail Station	Ratesetting	Ratesetting	NO
A01-05-007 NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT, for an Order authorizing construction of two (2) Standard No.8 Flashers pursuant to CPUC General Order No. 75-C, with low-tone bells, baffles and back to back roundels, at the existing concrete in-station pedestrian at-grade crossing at the Encinitas Commuter Rail Station	Ratesetting	Ratesetting	NO
A01-05-008 NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT, for an Order authorizing construction of two (2) Standard No.8 Flashers pursuant to CPUC General Order No. 75-C, with low-tone bells, baffles and back to back roundels, and the replacement of existing pavement with concrete crossing material, at an existing in-station pedestrian at-grade crossing and the construction of a new in-station crossing, with two (2) Standard No.8 Flashers, pursuant to CPUC General Order No. 75-C, with low tone bells and back to back roundels, and concrete crossing material at the Sorrento Valley Commuter Rail Station	Ratesetting	Ratesetting	NO
A01-05-009 SOUTHERN CALIFORNIA EDISON COMPANY, for Approval of Energy Efficiency and Low Income Energy Efficiency Performance Incentives for 2000 Program Year Accomplishments, the Second Installment of Demand-Side Management and Low Income Shareholder Incentives for the 1999 Program Year, and the Third Installment of Demand-Side Management Shareholder Incentives for the 1996 Program Year	Ratesetting	Ratesetting	YES
A01-05-010 IMPERIAL ENTERPRISES, INC., STAR DIRECT TELECOMMUNICATIONS, INC., Joint Application for Authority to Transfer Control of Star Direct Telecom, Inc. (U-5982-C) to Imperial Enterprises, Inc.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3063 (05/14/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-05-011 NARINDERJIT SINGH DHILLON, dba DHILLON AIRPORTER, for the authority to operate as a Passenger Stage Operation between points in Alameda County, Santa Clara County, and San Mateo County, and the Oakland, San Francisco and San Jose International Airports	Ratesetting	Ratesetting	NO
A01-05-012 SCX, INC., for a Certificate of Public Convenience and Necessity to operate as a vessel common carrier in scheduled and non-scheduled service between San Diego, Oceanside and Marina del Rey; request for interim authority to commence a demonstration service between San Diego and Oceanside	Ratesetting	Ratesetting	NO
A01-05-013 TARRI, SEYED K. H., dba PROMPT SHUTTLE CHARTER AIRPORT SHUTTLE, for authority to operate as a Passenger Stage Operation between points within the Orange County cities, on the one hand, and the John Wayne Airport, on the other hand	Ratesetting	Ratesetting	NO
A01-05-014 1-800-RECONEX, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-05-015 CITY OF ELK GROVE, for Authority to Install and Maintain Stationary Horn Warning Systems at Six Public Crossings over Union Pacific Railroad Company's main line, Grant Line Road, Elk Grove Boulevard, Elk Grove-Florin Road, Bond Road, Sheldon Road and Calvine Road, City of Elk Grove, as a pilot project as permitted by Senate Bill 1491 for the purpose of testing the utility and safety of stationary automated warning devices	Ratesetting	Ratesetting	NO
A01-05-016 NEW ACCESS COMMUNICATIONS LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3063 (05/14/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-05-017 SOUTHERN CALIFORNIA GAS COMPANY, for Authority to increase its Gas Revenue Requirements to Reflect its Accomplishments for Demand-Side Management Program Years 1996 and 1997, Energy Efficiency Program Year 2000, and Low-Income Program Years 1999 and 2000 in the 2001 Annual Earnings Assessment Proceeding ("AEAP")	Ratesetting	Ratesetting	YES
A01-05-018 SAN DIEGO GAS & ELECTRIC COMPANY, (U-902-M), for Approval of Incentives Associated with Its Accomplishments for Demand-Side Management Program Year 1996, Energy Efficiency Program Year 2000, Low Income Program Years 1999 and 2000 in the 2001 Annual Earnings Assessment Proceeding (AEAP)	Ratesetting	Ratesetting	YES
A01-05-019 NEW ACCESS COMMUNICATIONS LLC, for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange Services in the State of California	Ratesetting	Ratesetting	NO
A01-05-020 SOUTHWEST COMMUNICATIONS, INC., for registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-05-021 CLARICOM HOLDINGS, INC., CLARICOM NETWORKS, INC., PLATINUM EQUITY HOLDINGS, LLC, STACOM HOLDINGS, LLC, STAPLES, INC., for approval of a Purchase and Sale Agreement and Related Transaction	Ratesetting	Ratesetting	NO
A01-05-022 FIRSTWORLD ANAHEIM (U-5702-C), to withdraw from local exchange service	Ratesetting	Ratesetting	NO
A01-05-023 FIRSTWORLD SOCAL (U 5733 C), to withdraw from local exchange service in selected rate centers	Ratesetting	Ratesetting	NO